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Administrative Review
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July 28, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Certain Pasta from
Italy; 2015-2016

SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Italy for the period of review (POR) of July 1, 2015, through June 30, 2016. The Department preliminarily determines that Ghigi 1870 S.p.A. (previously known as Ghigi Industria Agroalimentare Srl) (Ghigi) and Pasta Zara S.p.A. (Pasta Zara) (collectively Ghigi/Zara) made sales of subject merchandise at less than normal value (NV) during the POR and Industria Alimentare Colavita S.p.A. (Indalco) did not. We used the margin assigned to Ghigi/Zara as the basis of the margin assigned to the firms that were not subject to individual review.¹

We invite interested parties to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). Once we issue the final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

¹ See section titled, "Margins for Companies Not Selected for Individual Examination," for additional details.



BACKGROUND

On July 24, 1996, the Department published in the *Federal Register* the *AD Order*² on pasta from Italy. On July 5, 2016, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pasta from Italy.³ Pursuant to requests from interested parties, on September 2, 2016, the Department published in the *Federal Register* the *Initiation Notice*.⁴ The Department initiated this administrative review covering the following 14 companies: Delverde Industrie Alimentari S.p.A. (Delverde Alimentari), Ghigi Industria Agroalimentare in San Clemente S.r.L. (Ghigi), GR.A.M.M. S.r.l. (GR.A.M.M.), Industria Alimentare Colavita, S.p.A (Indalco), La Fabbrica Della Pasta di Gragnano S.A.S di Antonio Moccia (La Fabbrica), Liguori Pastificio dal 1820 S.p.A. (Liguori), Pastificio Andalini S.p.A. (Andalini), Pastificio Felicetti S.r.L. (Felicetti), Pastificio Labor S.r.L. (Labor), Pastificio Zaffiri S.r.l. (Zaffiri), Premiato Pastificio Afeltra S.r.l. (Afeltra), Rustichella d'Abruzzo SpA (Rustichella), Tamma Industrie Alimentari de Capitanata S.r.L. (Tamma), and Tesa SrL (Tesa).⁵

On September 12 and September 26, 2016, the Department announced its intention to select mandatory respondents based on CBP data.⁶ On October 11, 2016, the Department selected Indalco and Liguori as mandatory respondents, and issued initial questionnaires to both companies on the same date.⁷ On October 13, 2016, Liguori timely withdrew its request for a review. On October 19, 2016, the Department selected Ghigi as a mandatory respondent and issued an initial questionnaire to Ghigi on the same date.⁸ On October 29, 2016, Rustichella timely withdrew its request for review. On October 30, 2016, Felicetti timely withdrew its request for a review. On November 2, 2016, the petitioners⁹ timely withdrew their request for a review of Tamma. On November 30, 2016, Delverde Alimentari timely withdrew its request for review. On December 12, 2016, Afeltra, La Fabbrica, and Labor, timely withdrew their respective requests for an administrative review.

On February 27, 2017, the Department rescinded the administrative review with respect to Afeltra, Delverde Alimentari, Felicetti, Labor, La Fabbrica, Liguori, Rustichella, and Tamma pursuant to the aforementioned timely withdrawal requests submitted by the respective parties.¹⁰

² See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996) (*AD Order*).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 43584 (July 5, 2016).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

⁵ See *Initiation Notice*.

⁶ See Memorandums titled, "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated September 12, and September 26, 2016.

⁷ See Memorandum titled, "Selection of Respondents for Individual Examination," dated October 11, 2016 (Respondent Selection Memo).

⁸ See Memorandum titled, "Selection of Mandatory Respondent," dated October 19, 2016 (Second Respondent Selection Memorandum).

⁹ The petitioners consist of New World Pasta Company, American Italian Pasta Company and Dakota Growers Pasta Company.

¹⁰ See *Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 82 FR 11903 (February 27, 2017).

Thus, in this administrative review, we are conducting individual examinations of Ghigi/Zara and Indalco. For the remaining firms covered by this administrative review which were not selected for individual examination, we have assigned the weighted-average dumping margin calculated for Ghigi/Zara, 16.07 percent, to the four non-selected companies in these preliminary results.¹¹ The firms receiving this non-selected rate are: Andalini, GR.A.M.M., Tesa, and Zaffiri.

Ghigi/Zara

In response to the Department's initial questionnaire dated October 19, 2016, Ghigi submitted a section A response on November 23, 2016 on behalf of itself and Zara.¹² Ghigi/Zara submitted its questionnaire response to the Department's sections B through D initial questionnaire on December 20, and 22, 2016, respectively.¹³ The petitioners submitted comments on Ghigi/Zara's response to the Department's sections A through D of the initial questionnaire on January 24, and March 27, 2017. The Department issued several section A-D supplemental questionnaires to which Ghigi/Zara provided its responses on February 9, March 9, and April 24, 2017.¹⁴

Indalco

In response to the Department's initial questionnaire dated October 13, 2016, Indalco submitted its section A response on November 10, 2016.¹⁵ Indalco submitted its questionnaire response to the Department's sections B through D initial questionnaire on November 18, 2016.¹⁶ On January 13, 2017, the petitioners submitted comments on Indalco's section A-C response. On January 31, 2017, the petitioners submitted comments on Indalco's section D response. The Department issued several section A-D supplemental questionnaires to which Indalco provided its responses on April 7, and July 11, 2017.

Extension of Preliminary Results

On February 21, 2017, the Department issued a memorandum extending the time period for issuing the preliminary results of the instant administrative review from April 2, 2017, to July 31, 2017.¹⁷

¹¹ See "Margins for Companies Not Selected for Individual Examination" section for further discussion of the derivation of the "non-selected rate."

¹² See Ghigi/Zara's Initial Questionnaire Response (IQR) section A, dated November 23, 2016 (Ghigi/Zara's AQR).

¹³ See Ghigi/Zara's IQR at sections B through D (BQR, CQR and DQR), dated December 20, and 22, 2016.

¹⁴ See Ghigi/Zara's first sections A-C supplemental questionnaire response (A-C SQR), dated February 9, 2017; *see also* Ghigi/Zara's section D supplemental questionnaire response (DSQR), dated March 9, 2017, and Ghigi/Zara's 2nd A-D supplemental questionnaire response (2nd A-D SQR), dated April 24, 2017.

¹⁵ See Indalco's Initial Questionnaire Response (IQR) section A, dated November 10, 2016 (Indalco's AQR).

¹⁶ See Indalco's IQR at sections B through D (BQR, CQR and DQR), dated November 18, 2016.

¹⁷ See Memorandum titled "Certain Pasta from Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2015/2016," dated February 21, 2017.

SCOPE OF THE ORDER¹⁸

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the Order.¹⁹ Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the Order.²⁰ Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the Order.²¹

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

AFFILIATION AND COLLAPSING

The Department has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.²² Therefore, we preliminarily determine that Ghigi and Pasta Zara are

¹⁸ See *Certain Pasta from Italy: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 82 FR 4291 (January 13, 2017).

¹⁹ See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

²⁰ See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

²¹ See *Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319, 58320 (September 29, 2014).

²² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5.

affiliated pursuant to section 771(33)(E) of the Act because Pasta Zara is the largest shareholder of Ghigi.²³

In addition, based on the evidence provided in Ghigi/Zara's questionnaire responses and 19 CFR 351.401(f), we also preliminarily determine that these companies should be collapsed and treated as a single entity in this administrative review.²⁴ This finding is based on the determination that those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and that the level of common ownership, interlocking board and managers, and intertwined operations between the companies present a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f)(2). *See Ghigi/Zara Collapsing Memo* for further details.

DISCUSSION OF METHODOLOGY

Date of Sale

As stated at 19 CFR 351.401(i), the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer established the essential terms of sale.

Ghigi/Zara reported the earlier of the date of the shipment or the sale invoice for the home market, and the invoice date as date of sale for their U.S. resales by Ghigi USA and Pasta Zara USA (Zara USA).²⁵ Indalco reported the invoice date as the date of sale, except for sales where shipment date preceded invoice date, in which Indalco reported the shipment date as date of sale,²⁶ in accordance with the Department's practice.²⁷ Thus, in these preliminary results we have used the dates of sale reported by the respondents in our margin calculations.

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), we compared export price (EP) and constructed export price (CEP) to NV, as described in the "Export Price/Constructed Export Price," and "Normal Value" sections of this decision memorandum, to determine whether sales of subject merchandise to the United States were made at less than NV.

²³ See Memorandum titled "2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Italy: Ghigi and Zara Collapsing Memorandum," dated concurrently with this memorandum (Ghigi/Zara Collapsing Memo).

²⁴ See Ghigi/Zara AQR at A-10 and Exhibit A-5.

²⁵ See Ghigi/Zara AQR at A-2 and Ghigi/Zara BQR at B-14.

²⁶ See Memorandum titled "Sales and Cost Analysis Memorandum for the Preliminary Results – Indalco" (Indalco Preliminary Results Sales and Cost Analysis Memorandum), dated concurrently with this memorandum; *see also* Indalco's BQR and CQR at page B-17 and C-12, respectively; *see also* Memorandum titled "Sales and Cost Analysis Memorandum for the Preliminary Results – Ghigi/Zara" (Ghigi/Zara Preliminary Results Sales and Cost Analysis Memorandum), dated concurrently with this memorandum; *see also* Ghigi/Zara's BQR at 9.

²⁷ See, e.g., *Solid Urea from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 35405 (June 17, 2011), unchanged in *Solid Urea from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 76 FR 66690 (October 27, 2011).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents that are covered by the description contained in the “Scope of the Order” section above and were sold in the home market during the POR, to be foreign like product for purposes of determining the appropriate product on which to base NVs for comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product on the basis of the hierarchy of reported physical characteristics: (1) product shape, (2) wheat species, (3) milling form, (4) protein content, (5) additives, and (6) enrichment.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²⁸

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁹ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ

²⁸ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 2016-1789, *9-11 (Fed. Cir. 2017); *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308 (CIT 2016).

²⁹ See, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes for Ghigi/Zara and Indalco.³⁰ Regions are defined using the reported destination codes (*i.e.*, state codes for Indalco and zip codes for Ghigi/Zara) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that passes the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-to-A method.

³⁰ Indalco reported one customer code in its U.S. sales database, as all of its sales during the POR were made to Colavita U.S.A. See Indalco’s Sec CQR (November 20, 2016) at C-9. Ghigi/Zara used different customer codes for the same customer.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

For Indalco, based on the results of the differential pricing analysis, the Department preliminarily finds that 21.67 percent of Indalco's U.S. sales passed the Cohen's *d* test,³¹ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Indalco.

For Ghigi/Zara, based on the results of the differential pricing analysis, the Department preliminarily finds that 81.87 percent of the value of U.S. sales pass the Cohen's *d* test,³² and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Ghigi/Zara.³³

³¹ See Indalco Preliminary Results Sales and Cost Analysis Memorandum for further details.

³² See Ghigi/Zara Preliminary Results Sales and Cost Analysis Memorandum for further details.

³³ *Id.*

Export Price/Constructed Export Price

According to section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. Pursuant to section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under {sections 772(c) and (d) of the Act}.”

Ghigi/Zara

In accordance with section 772(a) of the Act, we used the EP methodology for certain sales made by Pasta Zara because the subject merchandise was sold directly to the unaffiliated customer in the United States prior to importation, and because the CEP methodology was not otherwise warranted.³⁴ We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These expenses included foreign inland freight from the plant to the port of exportation and foreign brokerage and handling.

Both Ghigi and Pasta Zara made CEP sales during the POR.³⁵ We calculated CEP for those U.S. sales made by Ghigi and Pasta Zara’s U.S. affiliates in the United States based on prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where applicable, from the starting price for movement expenses including domestic inland freight from the plant/warehouse to the port of exit; foreign brokerage and handling; international freight; U.S. movement expenses from port to the unaffiliated customer; and U.S. customs duties.

Indalco

For Indalco’s U.S. sales, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter of subject merchandise outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on packed prices to the first unaffiliated purchaser in the United States. When appropriate, we adjusted the EP prices to reflect discounts, rebates, and billing adjustments.

In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for movement expenses, inland freight, brokerage and handling, international freight, freight rebate revenue, and U.S. customs duties.

³⁴ See Ghigi/Zara’s B-CQR, dated December 20, 2016 at C-4.

³⁵ *Id.*

Normal Value

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Ghigi/Zara and Indalco's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because both Ghigi/Zara and Indalco's aggregate volume of home market sales of the foreign like product was greater than five percent of their aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.³⁶ Moreover, there is no evidence on the record supporting a particular market situation in the exporting companies' country that would not permit a proper comparison of home market and U.S. prices.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁸ In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (*i.e.*, customer category), and the level of selling expenses for each type of sale.

Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.³⁹ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible.

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more

³⁶ See Indalco's AQR at 2 and Exhibit A.1; see also Ghigi/Zara's AQR at 3 and Exhibit A-1.

³⁷ See 19 CFR 351.412(c)(2).

³⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

³⁹ See *Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001).

advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁰

In this administrative review, we obtained information from the respondents, Ghigi/Zara and Indalco, regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.

Ghigi/Zara

Ghigi/Zara reported that they sold to different types of customers in the home market, but they conduct the same types of selling activities to all types of customers.⁴¹ Based on our analysis of the selling activities performed by Ghigi/Zara,⁴² we preliminarily determine that there is one LOT in the home market.

In the U.S. market, Ghigi/Zara reported three channels of distribution: EP sales made by Pasta Zara directly to unaffiliated U.S. customers (channel 1); CEP sales made by Ghigi USA or Zara USA but which were shipped directly to the unaffiliated U.S. customers by Ghigi or Pasta Zara, respectively (channel 2); and CEP sales made by Ghigi USA or Zara USA from U.S. inventory (channel 3). Ghigi/Zara reported three LOTs for its U.S. sales, respectively.⁴³ We compared the selling activities conducted by Ghigi/Zara among these three channels of distribution, and find that although there are differences in the levels of intensity performed for some of these functions, such differences are minor and do not establish three distinct levels of trade.⁴⁴ Accordingly, we preliminarily determine that the three U.S. sales channels constitute one LOT.

We disagree with Ghigi/Zara's contention that they perform far more significant selling activities in the home market than they do to sell to Ghigi USA and Zara USA for CEP sales.⁴⁵ Ghigi/Zara's selling activities and functions chart shows that the selling activities Ghigi/Zara performed for the home market customers are similar to the ones performed for their U.S. channel 2 sales with respect to the following categories: sales forecasting, market research/economic planning, customer contact/negotiation, order processing, packing/delivery arrangements, direct sales personnel and quality assurance/warranty services.⁴⁶ In spite of minor differences in level of intensity for certain selling function categories, we do not find that the NV LOT constitutes a more advanced stage of distribution than the CEP LOT for the channel 2 sales. Therefore, for the preliminary results, we preliminarily find that a CEP offset adjustment to NV is not warranted for the U.S. channel 2 sales.

⁴⁰ See *Plate from South Africa*, 62 FR at 61732-33.

⁴¹ See Ghigi/Zara A-C SQR at 13.

⁴² See Ghigi/Zara AQR at Exhibit A-8.

⁴³ See Ghigi/Zara's B-CQR at C-14.

⁴⁴ See Ghigi/Zara AQR at Exhibit A-8.

⁴⁵ See Ghigi/Zara A-C SQR at 13.

⁴⁶ See Ghigi/Zara AQR at Exhibit A-8.

For CEP channel 3 sales, record evidence shows that Ghigi/Zara performed fewer selling activities than they do in the home market. For example, Ghigi/Zara performed no selling activities with respect to sales forecasting, market research/economic planning, sales promotion/advertising, trade shows, and that they perform a low level of customer contact/negotiation. Therefore, we find that Ghigi/Zara's home-market selling activities constitute a marketing stage which differs from (and is more advanced than) the marketing stage at which Ghigi/Zara sell to their U.S. affiliates in their CEP channel 3 sales. The available data do not provide an appropriate basis for determining a LOT adjustment. Therefore, consistent with section 773(a)(7)(B) of the Act, for the preliminary results of this review, we are preliminarily granting Ghigi/Zara a CEP offset for their CEP channel 3 sales.

Indalco reported three channels of distribution for sales in the comparison market and one channel of distribution in the U.S. market in which all sales were EP sales.⁴⁷ Indalco reported that it provides fewer, and less intensive, selling functions for sales to its single channel of distribution in the United States as compared to its three channels of distribution for its sales in Italy.⁴⁸ Indalco does not claim a LOT adjustment between the different LOTs existing in the U.S. and home markets.⁴⁹ Indalco's chart of selling functions indicates the selling functions performed for sales in both markets are similar, with no significant variation across the broader categories of sales process/marketing support, freight and delivery and warehousing.⁵⁰ Consequently, for Indalco we preliminarily determine that there is one LOT that is the same for sales in both the home market and the U.S. market and, therefore, that no basis exists for a LOT adjustment. Accordingly, we did not make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412(e) because we preliminarily find that there was only one comparison market LOT and one U.S. LOT, and both the NV and EP sales were made at the same LOT.⁵¹

C. Sales to Affiliated Customers

We exclude comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.⁵² Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁵³ To test if sales to affiliates were made at arm's-length prices, we compare, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing (arm's-length test). Where prices to the affiliated party are, on average, within a range of 98-to-102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length.⁵⁴

⁴⁷ See Indalco's AQR at 11-14 and Exhibit A.4 and A.5; see also Indalco's BQR at B-14 and CQR at C-9.

⁴⁸ *Id.*, at 15-16.

⁴⁹ See Indalco's Supplemental Questionnaire Response (April 7, 2017) (1st SQR) at 16.

⁵⁰ *Id.*, at 17.

⁵¹ See Indalco Preliminary Results Sales and Cost Analysis Memorandum for further details.

⁵² See 19 CFR 351.403(c).

⁵³ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003).

⁵⁴ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

We preliminarily find that Ghigi/Zara made sales to affiliated customers during the POR. Accordingly, we applied the arm's-length test for these preliminary results. We preliminarily find that Indalco made no sales to any affiliated customers during the POR.⁵⁵ Accordingly, we did not apply the arm's-length test for these preliminary results.

Indalco

D. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to United States antidumping and countervailing law, including amendments to section 773(b)(2)(A) of the Act.⁵⁶ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015.⁵⁷ It requires the Department to request CV and cost of production (COP) information from respondent companies in all antidumping proceedings.⁵⁸ Because these amendments apply to this review, the Department requested this information from Ghigi/Zara and Indalco.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses and interest expenses.⁵⁹ We relied on the COP data submitted by Ghigi/Zara and Indalco. We examined the cost data and determined that our quarterly cost methodology is not warranted in this review. Therefore, we have applied our standard methodology of using annual costs based on the reported data of Ghigi/Zara and Indalco.⁶⁰

2. Test of Home Market Prices

As required under 773(b)(2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the home market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net home market prices for the below

⁵⁵ See Indalco's BQR at B-13.

⁵⁶ See *Trade Preferences Extension Act of 2015*, Pub. L. 114-27, 129 Stat. 362 (2015) (TPEA).

⁵⁷ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

⁵⁸ *Id.*, 80 FR at 46794-95.⁵⁹ See "Test of Comparison Market Sales Prices" section below for treatment of comparison market selling expenses.

⁵⁹ See "Test of Comparison Market Sales Prices" section below for treatment of comparison market selling expenses.

⁶⁰ See Ghigi/Zara Preliminary Results Sales and Cost Analysis Memorandum; see also Indalco Preliminary Results Sales and Cost Analysis Memorandum.

cost test by subtracting from the gross unit price all applicable movement charges, direct and indirect selling expenses, and packing expenses, where appropriate.⁶¹

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(1)(A) and (b)(2)(C)(i) of the Act, where less than 20 percent of respondent's comparison market sales of a given product are at prices less than the COP, we did not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities" within an extended period of time. Where 20 percent or more of a respondent's comparison market sales of a given product are at prices below the COP, we disregard the below-cost sales when: 1) they are made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C)(i) of the Act, and 2) they are at prices which would not permit the recovery of all costs within a reasonable period of time based on our comparison of prices to the weighted-average COPs for the POR, in accordance with sections 773(b)(1)(B) and (b)(2)(D) of the Act.

Our cost tests indicate that Ghigi/Zara and Indalco had certain home market sales that were sold at prices below the COP within an extended period of time in substantial quantities and were at prices which would not permit the recovery of all costs within a reasonable period of time.⁶² Thus, in accordance with section 773(b)(1) of the Act, we disregarded certain below-cost sales and used the remaining above-cost sales to determine NV.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for Ghigi/Zara and Indalco based on the reported packed, ex-factory, or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments and inland freight, pursuant to 19 CFR 351.401(c) and section 773(a)(6)(B)(ii) of the Act.⁶³

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit and commissions). We added U.S. packing costs and deducted comparison market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

⁶¹ See Ghigi/Zara Preliminary Results Sales and Cost Analysis Memorandum; *see also* Indalco Preliminary Results Sales and Cost Analysis Memorandum.

⁶² See Indalco Preliminary Results Sales and Cost Analysis Memorandum; *see also* Ghigi/Zara Preliminary Results Sales and Cost Analysis Memorandum.

⁶³ See Indalco Preliminary Results Sales and Cost Analysis Memorandum; *see also* Ghigi/Zara Preliminary Results Sales and Cost Analysis Memorandum.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.⁶⁴ For detailed information on the calculation of NV, *see* the Ghigi/Zara and Indalco Preliminary Sales and Cost Analysis Memoranda.

F. Price-to-CV Comparison

Where we were unable to find a comparison market match of identical or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

G. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Ghigi/Zara and Indalco's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Ghigi/Zara and Indalco in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Margins for Companies Not Selected for Individual Examination

Generally, when calculating the margin for non-selected respondents, the Department looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others margin in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others margin, the Department will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, the Department's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available.⁶⁵

In this review, we calculated a weighted-average dumping margin of 0.00 percent for Indalco and 16.07 percent for Ghigi/Zara for the period July 1, 2015, through June 30, 2016. Therefore, in accordance with section 735(c)(5)(A) of the Act, the Department assigned the weighted-average dumping margin calculated for Ghigi/Zara, 16.07 percent, to the four non-selected companies in these preliminary results, as referenced above.

⁶⁴ See 19 CFR 351.411(b).

⁶⁵ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

Currency Conversion


For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.⁶⁶

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree ☒ _____ Disagree ☐ _____

7/28/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁶⁶ The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.